

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL BARLETTA,

Petitioner,

V.

SUPERINTENDENT, ELMIRA
CORRECTIONAL FACILITY,

Respondent

MOTION

TO
TIME

REPEAL

23 Cv-6260(PMH)(JCM)

Application granted. The deadline to file objections to the Report and Recommendation is extended to July 22, 2024.

SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: White Plains, New York
May 22, 2024

The undersigned counsel, on behalf of Petitioner Daniel Barletta respectfully moves that this Court extend the time to file Objections to the Report & Recommendation, filed May 8, 2024, Doc. 17, by sixty (60) days from May 22, to July 22, 2024 and in support thereof states as follows:

1. On May 8, 2024, Magistrate Judge McCarthy filed a 27-page Report & Recommendation (the “R&R”) recommending dismissal of the instant petition for relief under 28 U.S.C. § 2254.

2. The length of the R&R reflects the enormity of attention that the issues in this case deserve. The R&R is based in part on an assessment of the errors we have claimed in the evidentiary ruling, but also on the conclusion that the state court ruling is an “independent and adequate state ground,” itself precluding federal relief, the latter not being an argument raised by the state. We find many reasons to object to the R&R and plan to seek a hearing *de novo* before this Court.

3. However, we of course have no advance notice of when an R&R will be handed up and, in this case, I have had no practical ability to take attention off of other critical matters needing to be attended to, and deadlines to be met in other case to capably prepare my objections. I have a national practice acting as a legal consultant or co-counsel on cases in state and federal courts involving autistic defendants and have an overwhelming load of submissions needing to be prepared and files in various jurisdictions at any one time.

4. At the time the R&R was filed I was trying to finalize papers and pleadings to satisfy deadlines or continue cases in cases in Seattle, New Orleans, and Massachisetts in advance of plea deadlines, motion deadlines and trial dates. While I have tried to do the research needed and the writing needed to file objections here, I realize that the matter will take far more time and attention than I am currently reasonably able to give.

5. Moreover, I have a long-scheduled trip to Europe in the first two weeks in June, out of state travel for cases in New Orleans, Colorado and Texas in the remainder of June, vacation time and a wedding covering 10 days in the middle of July, and a complicated hearing and presentation on a case to prepare for in Seattle at the end of July.

6. Because of this schedule I request a 60 day extension of the time to file objections to the R&R.

7. With these immediate obligations it would be extremely difficult for undersigned counsel to satisfy professional obligations to Mr. Barletta in less than the time I have requested.

8. Prior to filing the instant Motion, undersigned counsel communicated by email to Kirsten A Rappleyea, the Appeal Bureau Chief for the Dutchess County District Attorney's Office, who represents Respondent, seeking the position of the state. She has agreed to let me represent to the Court that Respondent has no opposition to the requested relief.

WHEREFORE, for the reasons stated above, on behalf of the Petitioner, I respectfully request that this Court extend the time to file Objections to the Report & Recommendation by sixty (60) days, from May 22, 2024 to July 22, 2024.

Dated: May 21, 2024

/s/ Mark J. Mahoney

Mark J. Mahoney
HARRINGTON & MAHONEY
70 Niagara Street, 3rd Floor
Buffalo, New York 14202
716-853-3700
mjm@harringtonmahoney.com
Attorneys for Defendant Marks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2024, I filed the foregoing with the Clerk of Court for the United States District Court for the Southern District of New York by using the CM/ECF System, which will send electronic notice to all counsel of record.

/s/ Mark J. Mahoney
Mark J. Mahoney